

Urban Area Investment means a Financing in an Enterprise whose Principal Office was located in an Urban Area at the time of the initial Financing.

USDA means the U.S. Department of Agriculture, a department of the Federal government headquartered at 1400 Independence Avenue, SW., Washington, DC 20250.

[69 FR 32202, June 8, 2004, as amended at 76 FR 80221, Dec. 23, 2011]

Subpart C—Qualifications for the RBIC Program

ORGANIZING A RBIC

§4290.100 Business form.

(a) *Newly-formed for-profit.* An Applicant for a RBIC license must be a newly formed for-profit entity or, subject to §4290.150, a newly formed for-profit subsidiary of an existing entity. It must be organized under the law of a State. An Applicant may be organized as a corporation (“Corporate RBIC”), a limited partnership (“Partnership RBIC”), or a limited liability company (“LLC RBIC”).

(b) *Purpose.* An Applicant must be organized solely for the purpose of performing the functions and conducting the activities contemplated under the Act: making Developmental Venture Capital investments and providing Operational Assistance to eligible Smaller Enterprises.

(c) *Articles.* The RBIC’s Articles—

(1) Must specify in general terms:

(i) The purposes for which the RBIC is formed;

(ii) The name of the RBIC;

(iii) The Rural Area or Areas in which it will operate;

(iv) The place where the RBIC’s headquarters will be located; and

(v) The amount and classes of the RBIC’s ownership interests.

(2) May contain any other provisions consistent with the Act that the RBIC may determine is appropriate to adopt to regulate its business and the conduct of its affairs.

(3) Are subject to the Secretary’s approval.

(d) *Duration*—(1) *Partnership RBICs.* If you are a Partnership RBIC:

(i) You must have a minimum duration of 10 years, or two years following the maturity of your last-maturing Leverage security, whichever is longer. After 10 years, if all Leverage has been repaid or redeemed and all amounts due the Secretary, his or her agent, or Trustee have been paid, the Partnership RBIC may be terminated by a vote of your partners;

(ii) None of your general partner(s) may be removed or replaced by your limited partners without prior written approval of the Secretary;

(iii) Any transferee of, or successor in interest to, your general partner shall have only the rights and liabilities of a limited partner prior to the Secretary’s written approval of such transfer or succession; and

(iv) You must incorporate all the provisions in this paragraph (d) in your limited partnership agreement.

(2) *LLC RBICs.* If you are a LLC RBIC, you must have a minimum duration of 10 years, or two years following the maturity of your last-maturing Leverage security, whichever is longer. After 10 years, if all Leverage has been repaid or redeemed and all amounts due the Secretary, his or her agent, or Trustee have been paid, the LLC RBIC may be terminated by a vote of your members.

(3) *Corporate RBICs.* If you are a Corporate RBIC, you must have a duration of not less than 30 years unless earlier dissolved by the shareholders, except that the Corporate RBIC must not dissolve until at least two years following the maturity of your last-maturing Leverage security.

§4290.110 Qualified management.

An Applicant must show, to the satisfaction of the Secretary, that its current or proposed management team is qualified and has the knowledge, experience, and capability in Community Development Finance or Relevant Venture Capital Finance, necessary for investing in the types of Enterprises contemplated by the Act, regulations in this part, and its business plan. In determining whether an Applicant’s current or proposed management team has sufficient qualifications, the Secretary will consider information provided by

the Applicant and third parties concerning the background, capability, education, training and reputation (and any other managerial aspect identified by the USDA in a FEDERAL REGISTER notice) of its general partners, managers, officers, key personnel, and investment committee and governing board members. The Applicant must designate at least one individual as the official responsible for contact with the Secretary.

[76 FR 80222, Dec. 23, 2011]

§ 4290.120 Plan to invest in Rural Areas.

An Applicant must agree that if licensed as a RBIC, it will make Developmental Venture Capital investments in Enterprises that will create wealth and job opportunities in Rural Areas and among individuals living in those areas.

§ 4290.130 Identified Rural Areas.

A RBIC must identify the specific Rural Area or Areas in which it intends to make Developmental Venture Capital investments and provide Operational Assistance under the RBIC program. The scope of the identified areas must be consistent with Applicant's business plan, especially as the plan relates to the Applicant's ability to operate actively, soundly, and profitably in such areas.

§ 4290.140 Approval of initial Management Expenses.

A RBIC must have its Management Expenses approved by the Secretary at the time it is licensed. (See § 4290.520 for the definition of Management Expenses.)

§ 4290.150 Management and ownership diversity requirement.

(a) *Diversity requirement.* You must have diversity between management and ownership in order to be licensed as a RBIC and to maintain your license. To establish diversity, you must meet the requirements in paragraphs (b) and (c) of this section.

(b) *Percentage ownership requirement.* No Person or group of Persons who are Affiliates of one another may own or control, directly or indirectly, more

than 70 percent of your Regulatory Capital or your Leverageable Capital.

(c) *Non-affiliation requirement.* At least 30 percent of your Regulatory Capital and Leverageable Capital must be owned and controlled by Persons unaffiliated with your management and unaffiliated with each other, and whose investments are significant in dollar and percentage terms as determined by the Secretary. Such Persons must not be your Associates (except for their status as your shareholders, limited partners or members) and must not Control, be Controlled by, or be under Common Control with any of your Associates. A single "acceptable" Institutional Investor may be substituted for two or three of the three investors who are otherwise required. The following Institutional Investors are "acceptable" for this purpose:

(1) Entities whose overall activities are regulated and periodically examined by State, Federal or other governmental authorities satisfactory to the Secretary;

(2) Entities listed on the New York Stock Exchange;

(3) Entities that are publicly-traded and that meet both the minimum numerical listing standards and the corporate governance listing standards of the New York Stock Exchange;

(4) Public or private employee pension funds;

(5) Trusts, foundations, or endowments, but only if exempt from Federal income taxation; and

(6) Other Institutional Investors satisfactory to the Secretary.

(d) *Voting requirement.* The investors relied upon to satisfy the diversity requirement may not delegate their voting rights to any Person who is your Associate, or who Controls, is Controlled by, or is under Common Control with any of your Associates, without prior approval by the Secretary.

(e) *Requirement to maintain diversity.* You must maintain management-ownership diversity while you are a RBIC. If, at any time, you no longer have the required management-ownership diversity, you must:

(1) Notify the Secretary within 10 days; and

(2) Re-establish diversity within six months after loss of diversity.